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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,250	11/21/2006	Timothee, Pol, Jean Toury	28944/50019	9696

57726 7590 09/11/2009  
MILLER, MATTHIAS & HULL  
ONE NORTH FRANKLIN STREET  
SUITE 2350  
CHICAGO, IL 60606

EXAMINER
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LYONS, MICHAEL A

ART UNIT	PAPER NUMBER
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2877

NOTIFICATION DATE	DELIVERY MODE
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09/11/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lrudaitis@MILLERMATTHIASHULL.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,250	<b>Applicant(s)</b> TOURY ET AL.	
	<b>Examiner</b> MICHAEL A. LYONS	<b>Art Unit</b> 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-14 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-14 and 16-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1-6, 8-14, and 16-29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 9-18, and 20-31 of U.S. Patent No. 7,450,237.** Although the conflicting claims are not identical, they are not patentably distinct from each other because the same inventive concept, while not identically claimed, is shared between the claims of the instant application and the claims of the ‘237 patent.

Particular claim correspondence is as follows:

Claim 1 of the instant application with claims 1, 2, and 4 of the '237 patent.

Claim 2 of the instant application with claim 5 of the '237 patent.

Claim 3 of the instant application with claim 1 of the '237 patent.

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Claim 4 of the instant application with claim 3 of the '237 patent.

Claim 5 of the instant application with claim 6 of the '237 patent.

Claim 6 of the instant application with claim 7 of the '237 patent.

Claim 8 of the instant application with claim 9 of the '237 patent.

Claim 9 of the instant application with claims 10, 13, and 16 of the '237 patent.

Claim 10 of the instant application with claim 17 of the '237 patent.

Claim 11 of the instant application with claim 10 of the '237 patent.

Claim 12 of the instant application with claim 14 of the '237 patent.

Claim 13 of the instant application with claim 15 of the '237 patent.

Claim 14 of the instant application with claim 18 of the '237 patent.

Claim 16 of the instant application with claim 20 of the '237 patent.

Claim 17 of the instant application with claim 21 of the '237 patent.

Claim 18 of the instant application with claim 22 of the '237 patent.

Claim 19 of the instant application with claim 23 of the '237 patent.

Claim 20 of the instant application with claim 24 of the '237 patent.

Claim 21 of the instant application with claim 25 of the '237 patent.

Claim 22 of the instant application with claim 26 of the '237 patent.

Claim 23 of the instant application with claim 27 of the '237 patent.

Claim 24 of the instant application with claim 28 of the '237 patent.

Claim 25 of the instant application with claim 29 of the '237 patent.

Claim 26 of the instant application with claim 30 of the '237 patent.

Claim 27 of the instant application with claim 31 of the '237 patent.

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Claim 28 of the instant application with claim 11 of the '237 patent.

Claim 29 of the instant application with claim 12 of the '237 patent.

*Allowable Subject Matter*

**Claims 1-6, 8-14, and 16-29 may be allowable in view of the prior art once the double patenting rejections set forth above are properly overcome.**

*Response to Arguments*

Applicant's arguments with respect to claims 1-6, 8-14, and 16-29 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL A. LYONS whose telephone number is (571)272-2420. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley can be reached on 571-272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael A. Lyons/  
Primary Examiner, Art Unit 2877  
September 8, 2009